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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

TOMMY CORNELL STOKES,

Defendant and Appellant.

F070941

(Super. Ct. No. F94511855-9)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Fresno County. Jonathan B. Conklin, Judge.

Peggy A. Headley, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Gomes, J. and Poochigian, J.

Appellant Tommy Cornell Stokes filed a petition seeking recall of his third-strike sentence pursuant to the provisions of Penal Code section 1170.126.<sup>1</sup> The trial court denied the petition, finding that he was ineligible under the terms of the statute. Appellate counsel filed a brief asserting she could not identify any arguable issues in the case. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) We agree and affirm the trial court's order.

### **DISCUSSION**

On November 5, 2014, appellant filed a petition to recall his sentence pursuant to the Three Strikes Reform Act of 2012 (Proposition 36; § 1170.126). According to the petition, appellant was convicted of robbery in 1994. At the time of his 1994 conviction, he had suffered two prior robbery convictions. The trial court denied the petition on the ground that appellant was ineligible for resentencing because robbery is both a serious and a violent felony. (See §§ 667.5, subd. (c)(9), 1192.7, subd. (c)(19).)

Appellant filed a timely notice of appeal. Appellate counsel filed a brief pursuant to *Wende, supra*, 25 Cal.3d 436, raising no arguable issues in the case and asking this court to independently review the record. By letter dated June 8, 2015, we invited appellant to inform us of any issues he would like this court to address. On July 6, 2015, appellant filed a letter conceding that he does not qualify for Proposition 36 relief, but challenging the fairness of his robbery conviction.

Upon review of the record, we agree appellant was ineligible for resentencing.

Section 1170.126 defines those eligible for resentencing as those serving an indeterminate third-strike sentence with the following exclusions: (1) the inmate is not serving a sentence for a crime that is listed as a serious or violent felony (§§ 667.5, subd. (c), 1170.12, subd. (b)); (2) the inmate is not serving a sentence for a crime that is listed

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise noted.

in section 667, subdivisions (e)(2)(C)(i) through (iii), or 1170.12, subdivisions (c)(2)(C)(i) through (iii); and (3) the inmate does not have a prior conviction for an offense appearing in sections 667, subdivision (e)(2)(C)(iv), or 1170.12, subdivision (c)(2)(C)(iv). (§ 1170.126.) Appellant does not meet these eligibility requirements.

**DISPOSITION**

The order denying resentencing is affirmed.